

6/26/02

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF
THE TTAB

Hearing:
May 16, 2002

Paper No. 22
PTH

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re American Farm Bureau Federation

Serial No. 75/510,307

Richard A. Flynt and Mark V. Sparacino of Roylance, Abrams,
Berdo & Goodman, L.L.P. for applicant.

Hannah Fisher, Trademark Examining Attorney, Law Office
107 (Thomas Lamone, Managing Attorney).

Before Quinn, Hairston and Bucher, Administrative Trademark
Judges.

Opinion by Hairston, Administrative Trademark Judge:

American Farm Bureau Federation applied to
register the mark FARM BUREAU WEBMASTER, as reproduced
below,

**FARM BUREAU
WEBMASTER**

for "providing multiple-user access to the global computer information network."¹

The Trademark Examining Attorney required that applicant disclaim exclusive rights to the term WEBMASTER, and when this refusal was made final, applicant appealed. Applicant and the Examining Attorney have filed briefs, and an oral hearing was held before this panel.

Section 6 of the Trademark Act provides that the Commissioner may require the applicant to disclaim an unregistrable component of a mark, which is otherwise registrable. Section 2(e)(1) prohibits registration of marks which, when used in connection with the services of the applicant, are merely descriptive of them.

It is the Examining Attorney's position that the term WEBMASTER is merely descriptive of applicant's services and therefore must be disclaimed. The Examining Attorney argues that the term "webmaster" is commonly associated with Internet access providers because such providers often offer Web site design services and these services are performed by a "webmaster." According to the Examining Attorney, customers or prospective customers of applicant's

¹ Application Serial No. 75/510,307, filed June 29, 1998. The application is based on an intent-to-use under Trademark Act Section 1(b).

services would be likely to believe that applicant offers Web site design services and thus WEBMASTER is an unregistrable component of applicant's mark.

As support for her contention that WEBMASTER is merely descriptive of applicant's services, the Examining Attorney made of record excerpts taken from the NEXIS database wherein "webmaster" is used to refer to a person in the computer field who manages Web sites. The following are representative excerpts:

Some commerce servers provide Web masters with rudimentary database administration features, but you really need to use third-party tools to make your database dance and sing . . .
(PC Magazine; June 24, 1997);

As Web masters gain experience with new technologies like the virtual reality modeling language, he added, fewer users will get lost in cyberspace . . .
(Electronic Engineering Times; June 16, 1997); and

If you're a beginning web master or web content developer, you need to familiarize yourself with web server security and configuration before attempting to install and configure the server . . .
(Databased Web Advisor; August 1997).

In addition, the Examining Attorney submitted copies of third-party registrations for marks, which include the term WEBMASTER for various services wherein the term is disclaimed.

Applicant, in urging reversal of the refusal to register, argues that the term WEBMASTER only suggests that applicant is proficient with respect to some unstated facet of the Internet, but that the mark does not directly convey information about applicant's Internet access services. Applicant states that while the term "webmaster" is used to refer to a person who manages or administers a website, applicant's services, as described, do not include managing or administering a Web site, and that therefore the term WEBMASTER is not merely descriptive of applicant's services.

A term is merely descriptive, and therefore unregistrable pursuant to Section 2(e)(1), if it immediately conveys knowledge of the ingredients, qualities, or characteristics of the services with which it is used. On the other hand, a term which suggests is registrable. A suggestive term is one which suggests rather than describes such that imagination, thought or perception is required to reach a conclusion on the nature of the services. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987).

There is no dispute about the meaning of the term "webmaster." Given the NEXIS evidence of record and applicant's acknowledgement of the meaning, it is clear

that the term is used to refer to a person who manages or administers a Web site. We are unable to find, however, that when used in connection with applicant's identified services, WEBMASTER is merely descriptive thereof. There is simply no evidence in this record from which we may conclude that applicant's identified services encompass the management or administration of Web sites. In the absence thereof, we are unable to say that WEBMASTER immediately conveys knowledge of a characteristic of applicant's services. Contrary to the Examining Attorney's position, it is not enough that the term "webmaster" is associated with applicant's type of services for a finding of descriptiveness.

Although we have considered, of course, the third-party registrations introduced by the Examining Attorney, we are not persuaded to reach a different result in this appeal. We readily concede they tend to show that in the past the Trademark Examining Operation has viewed the term "webmaster" to be merely descriptive as used for certain services. As the Board often has stated, each case must be decided on its own set of facts. In this regard, we note that the third-party registrations cover services, which are very different in nature from those involved in this appeal. Three of the registrations cover educational

services which appear to be in the nature of webmaster training; one of the registrations covers conferences which appear to be designed for webmasters; and another of the registrations covers services of a type that a webmaster would perhaps provide. Thus, the fact that the Office has required a disclaimer of WEBMASTER in the case of these registrations does not persuade us that a disclaimer is required in the case before us.

In sum, WEBMASTER does not immediately convey information about a quality or characteristic of applicant's identified services.

Decision: The requirement for a disclaimer of WEBMASTER, and the consequent refusal to register for failure to provide such a disclaimer, is reversed.

Ser No. 75/510,307